

AG Contract No.: KR05-0290TRN  
ADOT ECS File No.: JPA 05-030  
TRACS: H5955 14C  
Section: State Route 85 between I-8 & I-10  
Budget Source Item No.: \_\_\_\_\_

## JOINT PROJECT AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
ROSTON COMPANY SOUTHWEST LLC.

THIS AGREEMENT is entered into this date June 29th 2007,  
between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF  
TRANSPORTATION (the "State") and ROSTON COMPANY SOUTHWEST, LLC., an Arizona  
limited liability company ("Roston"), acting by and through its Manager.

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. Roston is empowered to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Roston.

3. The State has appropriated funding to reconstruct State Route 85 between I-8 and I-10 as a full access controlled facility (freeway). The State acquired right-of-way in the 1970's for the design concept that would utilize two way frontage roads parallel to State Route 85 from Maricopa County 85 to I-10 for local access, which would terminate at a grade separation located at Lower Buckeye Road. The State plans to eliminate the frontage roads between Broadway Road and Lower Buckeye Road and the Lower Buckeye Road grade separation from the project. In order to cure the resulting loss of access to abutting land, the State will pay Roston an agreed amount cost as a cost to cure. The cost to cure is intended to assist Roston in building a connector road on each side of SR 85, parallel to and at some distance away from the highway between Broadway Road and Lower Buckeye Road alignment, with a crossroad known as Warner Street extending between the connector roads excluding the Warner Street Bridge crossing SR 85 which will be constructed by the State. The connector roads will provide access for the abutting properties between Broadway Road and I-10 to State Route 85 at Broadway Road.

THEREFORE, in consideration of the mutual covenants expressed herein, it is further agreed as follows:

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**I. SCOPE OF WORK**

1. The State will perform the following in accordance with the Project Schedule in Section II:

a. Provide a temporary construction easement, or other appropriate permit or license for access, to Roston, if needed, across Assessor's Parcel No. 504-28-012D, and as needed with respect to the construction of the approaches (including ramps) on either side of the State right-of-way at the site of the Warner Street Bridge, upon reasonable conditions. All easements needed to construct the connector roads and Warner Road that encroaches on State right of way will be conveyed to the Town of Buckeye.

b. Design and construct a 4-lane bridge over State Route 85 at Warner Street, ("Warner Street Bridge") within the State's right-of-way at the time of State Route 85 reconstruction.

c. Construct two-lane Broadway Road from SR 85 pavement to the west connector road east curb returns as shown on Exhibit ("A").

d. Connect State Route 85 to two-lane Broadway Road within the State's right-of-way.

e. Upon completion of construction of connector roads by Roston, the State will transfer a 110' wide corridor located within Assessor's Parcel No. 504-28-012D to the Town of Buckeye.

f. Reimburse Roston for the construction of connector roads and Warner Road access road improvements in a total amount of \$3,500,000.00 (the "ADOT Contribution"), in accordance with progress payments schedule in Section II.

2. Roston will perform the following in accordance with Project Schedule in Section II:

Acquire the necessary right-of-way, design, and construct the following (collectively, "Roston's Project"):

- i. The east and west connector roads; and
- ii. Warner Street between each connector road and SR 85 right-of-way, including the Bridge approaches (see Exhibit "A").

b. Construct Roston's Project in a manner not to unreasonably impede the State's construction project.

c. Prepare design plans specifications and other such documents to applicable Town of Buckeye standards (which are based on MAG standards), required for bidding and construction of Roston's project. Submit same to the State for comments as appropriate. Roston and the State acknowledge and agree that the Town of Buckeye shall have exclusive jurisdiction for permitting Roston's Project.

d. Advertise for bids and award one or more construction contract(s) for Roston's Project, administer contracts for Roston's Project and make all payments to the contractor(s). Be responsible for all cost overruns, or increases, and all contractor claims for additional compensation.

e. Include the following provisions in the Roston's construction contract:

- i. Performance and payment bonds in accordance with title 34 of the Arizona Revised Statutes.
- ii. Requiring the contractor to name the State as an additional insured in the contractor's insurance policies.
- iii. Requiring the contractor to name the State as an additional indemnitee.

f. Provide evidence of an approved development agreement with the Town of Buckeye, whereby the Town accepts connector roads and Warner Street as Town roads upon completion of the construction.

g. Provide to the State, at no additional cost, a temporary construction easement, if needed, to construct the Warner Street Bridge.

## **II. PROJECT SCHEDULE :**

### **Phase I.**

a. Within sixty (60) calendar days after the date of execution of this Agreement, (the "Phase I Deadline"), Roston shall:

- (i) Enter into binding contracts (the "ROW Acquisition Contracts") with each applicable property owner to acquire right-of-way for Roston's Project and to extinguish all rights to frontage roads held by owners of land abutting on State Route 85 between Broadway Road and I-10. The extinguishment of access rights to be effective upon completion of the connector roads.
- (ii) Place documents in escrow in favor of the Town of Buckeye, granting the right-of-way to the Town on completion of construction.
- (iii) Deliver copies of executed documents evidencing the transactions to the State.

b. If Roston fails to submit the right-of-way documents described in paragraph (a) above by Phase I Deadline, to the State's reasonable satisfaction, this Agreement may be terminated by the State; and the State shall owe nothing to Roston on such termination.

### **Phase II.**

a. On or *before August 1, 2007*, Roston shall submit 95% plans and specifications for the Roston's Project to the State for verification, review, and acceptance. State shall provide initial comments or objections within fifteen (15) working days of receipt and thereafter, State shall provide comments or objections to revised design documents within five (5) working days of receipt. Roston shall cure any defects reasonably found by the State within thirty-day (30) calendar days after notice

b. On or *before October 1, 2007*, Roston shall submit 100% plans and specifications for the Roston's Project to the State for verification, review, and acceptance. State shall provide initial comments or objections within fifteen (15) working days of receipt and, thereafter, State shall provide comments or objections to revised design documents within five (5) working days of receipt. Roston shall cure any defects reasonably found by the State within thirty-day (30) calendar days after notice.

c. If Roston's plans and specifications are not complete and approved *by April 1, 2008* this Agreement may be terminated by the State in its discretion. In case of such determination, any preliminary or final design documents for Roston's Project become the property of the Town of Buckeye.

### **Phase III.**

a. Upon approval by both the State and the Town of Buckeye, Roston shall award the construction contract for Roston's Project, excluding Warner Street surfacing *by July 1, 2008*.

b. On or before execution of the construction contract, Roston or its contractor shall provide a performance bond or other suitable form of financial assurance (including without limitation, cash, letter of credit or surety bond, or a combination of the foregoing), in a form and from an issuer reasonably acceptable to the State, with a penal sum of 125% of the bid for construction of Roston's Project, naming the Town of Buckeye as obligee, and Roston as principal, guaranteeing the full and complete performance of the construction of Roston's work. Such assurance will

remain in force until the substantial completion Project. However, from time to time, the amount of the financial assurance may be reduced so long as the available amount is not less than 125% of the remaining costs to complete the construction of Roston's Project.

c. Roston shall complete the construction of the connector roads, obtain final approval of connector roads by Town of Buckeye, and grade (preliminarily) the approaches to the Warner Street Bridge as shown on Exhibit ("A") by March 1, 2009.

d. Upon substantial completion of the approaches to the Warner Street Bridge and granting of a temporary construction easement, ADOT will assume maintenance responsibility for the portions of such approaches between the State right-of-way and the peak of the approaches until the bridge and backfill are completed.

#### Phase IV.

a. Upon completion of Broadway Road construction, by the State, Roston shall accept operation and maintenance responsibilities of Broadway Road between the connector roads as a public road for all portions outside the State's right-of-way if and only if, the Town of Buckeye does not do so.

b. Upon completion of the Warner Street Bridge by the State, Roston shall construct the remainder of Warner Street. The State agrees to complete the Warner Street Bridge and the backfill in conjunction with and at the same time as the completion of the SR 85 project between Broadway Road and I-10. In the event the completion of the Warner Street Bridge does not occur by June 30, 2012, Roston shall be excused from its obligation to complete the Warner Street construction..

c. Roston shall notify the State immediately upon substantial completion of each component of Roston's Project and upon final acceptance of each component by the Town.

#### Payments:

The State shall pay the ADOT Contribution to Roston as follows:

Substantial Completion of Grading for the connector roads and Warner Street	15
Completion of Utilities (other than streetlights)	10
Substantial Completion of bridging over the RID canal	40
Substantial Completion of Paving of Connector Roads	25
Final Acceptance of Connector Roads by Town	5%
Completion and acceptance by the State and the Town of Warner Street and approaches	<u>5%</u>

**Total Amount                      100%**

As used above, "substantial completion" shall mean completion of such portions of the Roston Project substantially in accordance with the construction plans and specifications and open to traffic flow at design speeds. The existence of only "punch list" or minor deviations or deficiencies shall not preclude a finding of substantial completion. If a component is substantially complete, but subject to punch list or minor deviations or deficiencies, then the State shall disburse the appropriate amount, subject to a retention of 125% of the estimated cost to complete or repair the item(s) constituting the punch list or minor deviation or deficiency.

### III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion and acceptance by the Town of Buckeye. Either party may cancel this Agreement at any time prior to the end of Phase I, upon a thirty-day (30) written notice to the either party.

2. The State assumes no financial obligation or liability under this Agreement nor for any resulting construction project, other than those obligations and funding liabilities specifically set forth in this Agreement. It is understood and agreed that the State's participation is confined solely to that set forth under this Agreement.

3. Roston hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and /or damages incurred by the State and from any claims made against the State, which directly or indirectly results from the breach of this Agreement by Roston, except to the extent caused by the acts or omissions of the State, or any of its departments, agencies, officers and employees. Costs incurred by the State, and of its departments, agencies, officers or employees shall include, in the event of any action, court costs, and expenses of litigation and attorneys' fees.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Sections 38-511.

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by binding arbitration under the construction arbitration rules of the American Arbitration Association existing at the time of arbitration.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination."

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph. Alternatively, the State may treat the lack of funding as *force majeure* under Section III. (12) of this Agreement. Notwithstanding the foregoing, the State shall be liable for the amounts incurred for the construction completed to the date when the State notifies Roston that funds are no longer available.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, AZ. 85007 FAX (602) 712-7424

C/O Roston Company Southwest, LLC.  
300 Carlsbad Village Drive, Suite 223  
Carlsbad, CA 92008  
Att: James B. Connor (602) 530-8524

10. It is understood and agreed to that this Agreement may be amended in writing when deemed necessary by both parties.

11. *Force Majeure*: If the State is delayed at any time in progress of the work or other obligations required hereunder, or prevented from completing its obligations (including the construction of the State Project) by labor disputes, abnormal adverse weather conditions, inaction or arbitrary actions by third parties beyond the control of the State, or any causes beyond State's control, then the each date set forth in this Agreement for Phases III and IV shall be extended for such time as may be reasonably necessary.

12. *Force Majeure*: If Roston is delayed at any time in progress of the work or other obligations required hereunder, or prevented from completing its obligations (including the

construction of the Roston Project) by labor disputes, abnormal adverse weather conditions, inaction or arbitrary actions by third parties beyond the control of Roston, or any causes beyond Roston's control (financial inability excluded), then the each date set forth in this Agreement for Phases III and IV shall be extended for such time as may be reasonably necessary.

13. *Assignment*: All of the provisions hereof shall inure to the benefit of and be binding upon the personal representatives, successors and assigns of the parties. Roston shall not have any right to assign its interest hereunder without the prior written consent of the State, which shall not be unreasonably withheld, conditioned or delayed, and any such assignment without the State's consent shall be voidable at the State's option. Any consent to a proposed assignment by Roston may be conditioned upon a corresponding assignment of the applicable development agreement with the Town of Buckeye. Notwithstanding anything stated herein to the contrary, the State hereby approves an assignment of this Agreement to Beazer Homes Corporation, or an affiliate thereof, provided Beazer also assumes the development agreement with the Town of Buckeye.

14. *Town of Buckeye Rights*: The State agrees that upon receipt of notice from the Town of Buckeye that: (i) Roston has failed to pursue or complete the construction of the Roston Project as required by the Town of Buckeye; and (ii) the Town of Buckeye has elected to pursue and complete the construction of the Roston Project; then, the State shall make payments of the ADOT Contribution to the appropriate entity or entities pursuant to the schedule set forth above.

15. *Notice and Cure*: A party shall be in default if it breaches a covenant provided herein and the breach continues; (i) for ten(10) days after notice from the other party, if the breach is the failure to pay a sum of money; or (ii) for thirty (30) days (or such additional, reasonable period of time provided the breaching party commences its curing efforts and thereafter diligently pursues the completion of the cure) after notice from the other party for all other breaches.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written

THE ROSTON COMPANY SOUTHWEST, LLC.,  
an Arizona limited liability company

STATE OF ARIZONA  
Department of Transportation

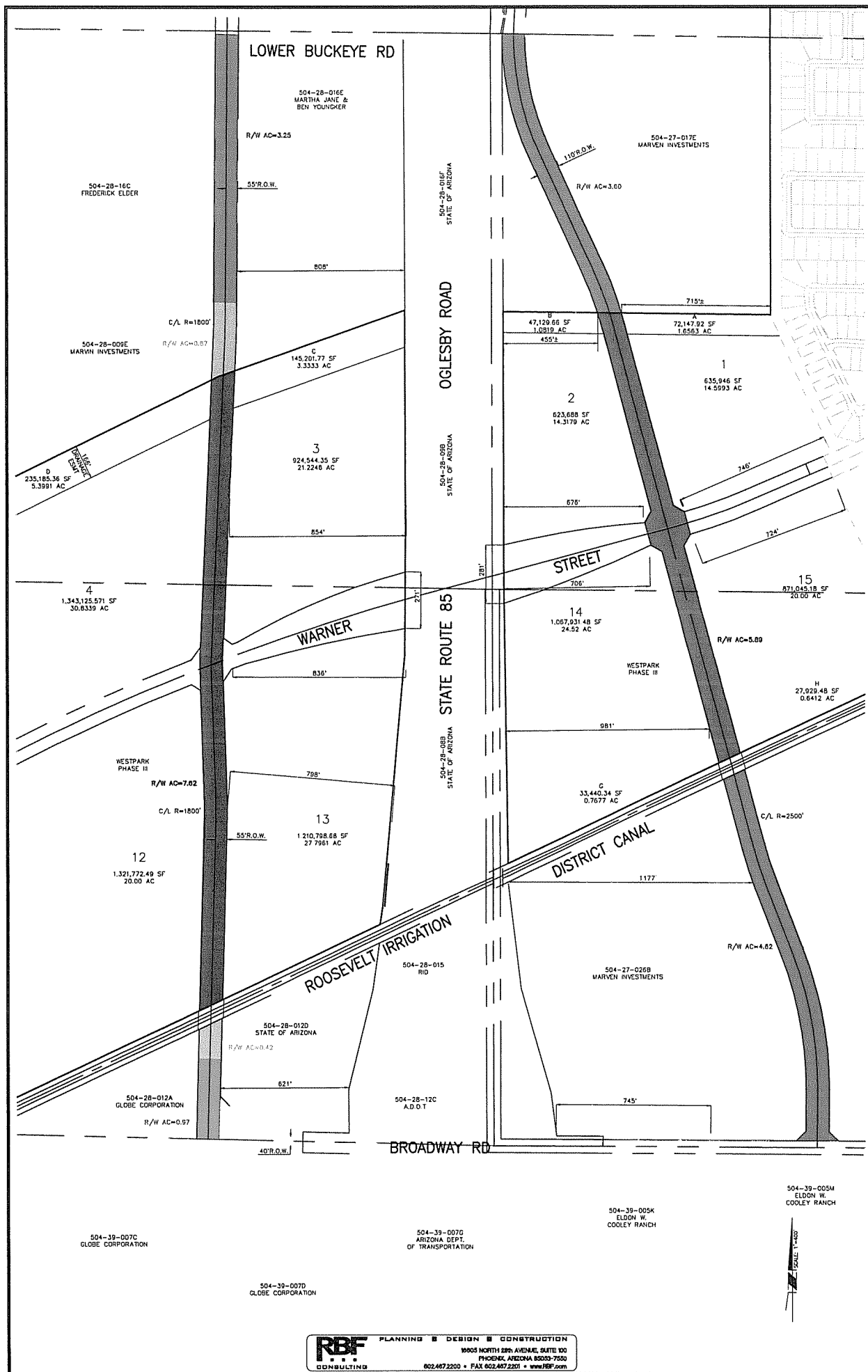
By J. Fyfe 4/20/07  
MICHAEL C. ROSTON ~~Manager~~ *FERGUS member*

By Daniel S. Lance  
DANIEL S. LANCE, P.E.  
Deputy State Engineer, Valley Transportation

G:05-030-Roston-SR 85 between I-8 & I-10

Revised April 26<sup>th</sup>, 2007 ly

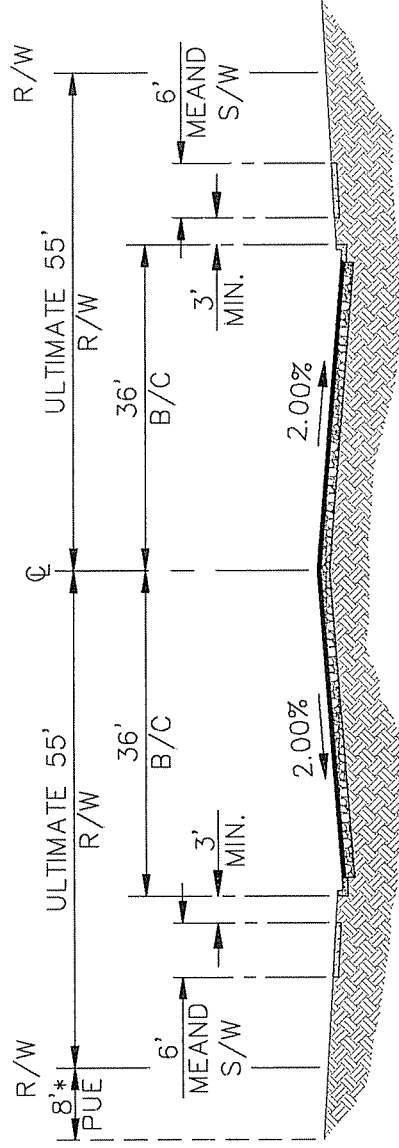
**EXHIBIT "A"**





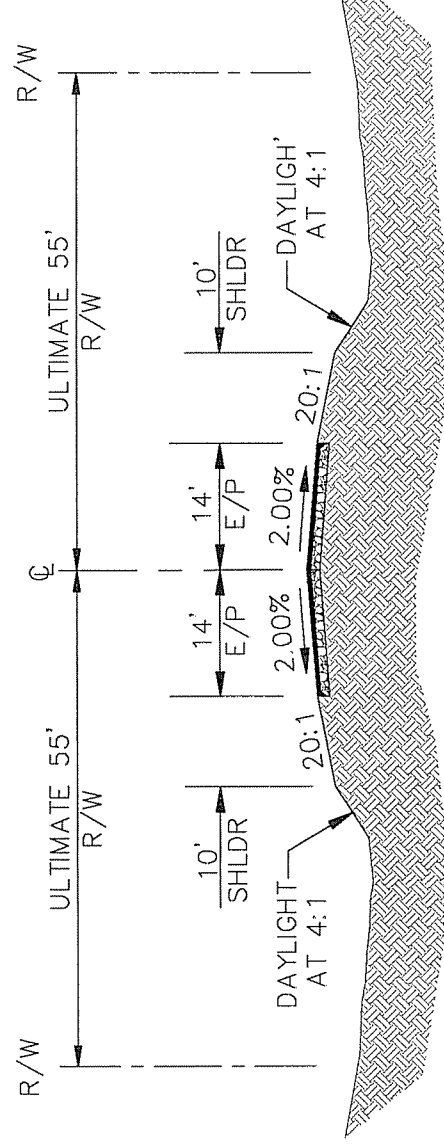
# SR-85 CONNECTOR ROAD

## CROSS SECTIONS



### ULTIMATE SECTION

\*EAST CONNECTOR ROAD PUE ALONG WEST SIDE OF ROAD  
WEST CONNECTOR ROAD PUE ALONG EAST SIDE OF ROAD



### INTERIM SECTION

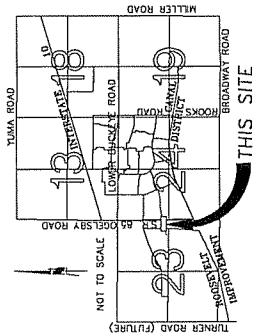
NOTE: IN THE INTERIM CONDITION, STREET LIGHTS WILL BE PROVIDED.

JOB# 45-102790

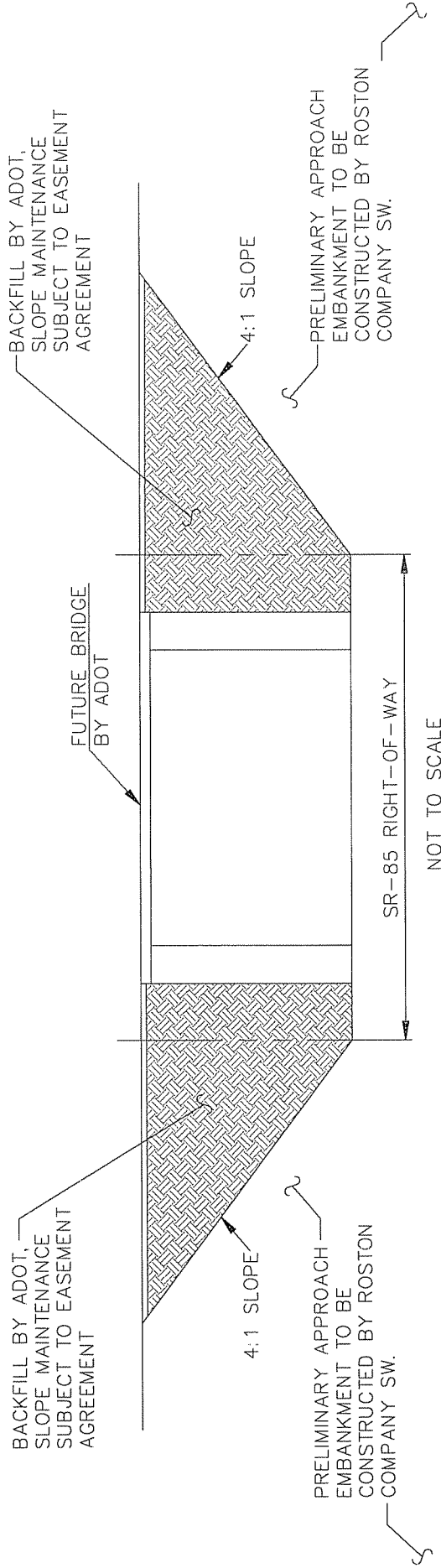
**RBF**  
CONSULTING

PLANNING  
DESIGN  
CONSTRUCTION

# WARNER STREET EXHIBIT FOR SR-85 CROSSING



VICINITY MAP  
INS



**RBF**  
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PLANNING ■ DESIGN ■ CONSTRUCTION  
16605 NORTH 28th AVENUE, SUITE 100  
PHOENIX, ARIZONA 85053-7550  
602.467.2200 ■ FAX 602.467.2201 ■ WWW.RBF.COM

WARNER STREET/  
SR85 CROSSING EXHIBIT  
DATE: 06/21/07  
JN# 45-102790



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